IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

KENNETH W. VAUGHN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 09-CV-725-GKF-FHM
)	
MICHAEL J. ASTRUE,)	
Commissioner, Social Security Administration,)	
)	
Defendant.)	

OPINION AND ORDER

Before the court is the Report and Recommendation ("R&R") of United States Magistrate Judge Frank H. McCarthy. (Dkt. #18). No objections were filed to the R&R. The R&R is a judicial review of the decision of the Michael J. Astrue, Commissioner of the Social Security Administration, to deny the claim of plaintiff Kenneth W. Vaughn ("Vaughn") for Social Security disability benefits under Title XVI of the Social Security Act ("SSA"), 42 U.S.C. § 1382c(a)(3)(A).

The court has reviewed the R&R to determine "whether the factual findings are supported by substantial evidence in the record and whether the correct legal standards were applied." *Doyal v. Barnhart*, 331 F.3d 758, 760 (10th Cir. 2003). The court must "neither reweigh the evidence nor substitute [its] judgment for that of the agency." *White v. Barnhart*, 287 F.3d 903, 905 (10th Cir. 2001) (quoting *Casias v. Sec'y of Health & Human Servs.*, 933 F.2d 799, 800 (10th Cir. 1991)).

The Magistrate Judge determined that the record as a whole supported the finding of the

Administrative Law Judge ("ALJ") that substance abuse was a material factor in Vaughn's disability. The Magistrate Judge also found that the ALJ did not substitute her opinion for that of the treating physician. Finally, the Magistrate Judge determined that it was not necessary to reach the issue of how to characterize the plaintiff's work attempts, because the substance abuse determination was supported by the record. The court has reviewed the R&R and concurs with the Magistrate Judge's recommendations therein.

For the reasons set forth above, the Report and Recommendation of the Magistrate Judge (Dkt. #18) is accepted and adopted as the order of the court, and the decision of the ALJ denying Vaughn's application for benefits is affirmed.

IT IS SO ORDERED this 15th day of February, 2011.

Gregory K. Prizzell

United States District Judge Northern District of Oklahoma